

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Welcome to Our Legislation Issue. As you know, we strive to keep *The Extra Mile* to two pages. In this issue we devote four pages to review four of the most important pieces of new school legislation to come out of the most recent legislative session. We will review all significant new legislation affecting you at the **IASA sponsored The Year In Review: The Highlights and Lowlights of Illinois School Law 2009 in October.** Please visit www.iasaedu.org to register on-line. Please also note that space is limited at all three locations.

School District Ordered to Allow Autistic Child to Have Service Dog at School--In a case receiving wide media attention in the "metro-east" Illinois area (outside of St. Louis) an Illinois trial court has ordered a southern Illinois school district to allow a disabled student to have his service dog attend school with him.

The parents of an autistic child recently sued Columbia Community

Unit School District for refusing to allow their child to be accompanied at school by a "service dog" they had purchased for their child.

The parents based their claim on Section 14-6.02 of the *School Code*, which provides that "... service animals such as guide dogs, signal dogs, or any other service animal individually trained to perform tasks for the

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Freedom of Information and Open Meetings Acts Overhauled/IASA-HLERK to Hold Conferences--Public Act 96-0542 (SB 189) substantially amends and strengthens both the *Illinois Open Meetings Act* ("OMA") and the *Illinois Freedom of Information Act* ("FOIA"), effective **January 1, 2010.** The amendments will substantially impact how schools and school boards operate.

Effective January 1st, both the OMA and the FOIA will require public bodies to designate school personnel to complete an electronic training curriculum. Also, in the case of alleged violations by a public body, both Acts will provide the public with access to a review procedure involving the Office of the Attorney General.

With respect to FOIA, the entire law has been drastically revised to promote a new policy and purpose that requires public bodies, including school boards, to be more open and transparent with their documents and information than ever before.

Open Meetings Act

With respect to the *Open Meetings Act*, there are four significant changes:

1. The Act grants individuals the right to request the Attorney General to review potential OMA violations and authorizes the Attorney General to issue

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Consumer Price Index

Percent change for the month of **July, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.0	-0.1
12 Mth	-0.3	-3.5
St. Louis-6 Mth	-0.9	-1.3
12 Mth	-0.5	-1.0
U.S. Mthly	-0.2	-0.2
12 Mth	-2.1	-2.7

August CPI figures will be released September 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Join us at our co-sponsored reception at the Illinois Alliance of Administrators of Special Education's Fall Conference on September 24th. Please stop by and say hello. **Jay Kraning** and **Bennett Rodick** will also be presenting at the Conference.
- Prepare your district's administrator's salary compensation report and submit it to your board at its regular September meeting and post it on the district's website by October 1st. (See Article, Page 2)
- Require student health exam and immunization compliance by October 15th unless you have set an earlier date and provided notice to parents of the earlier date.

Offices:

Arlington Hts. 847-670-9000
Belleville 618-355-7850

School Districts Must Post Administrative Compensation and Collective Bargaining Agreements on School District Websites--Public Act 96-0434 (SB 2270), effective immediately, amends Sections 10-20.46 and 34-18.37 of the *School Code* to require every school district in Illinois, including special charter districts, to post on their website a current itemized salary compensation report for every employee holding an administrative certificate and working in that capacity, including the district superintendent.

The law requires school districts to post these reports on their websites, if any, by October 1st of each year. Additionally, the new law requires school districts to post all collective bargaining agreements on their websites.

With respect to the administrator salary compensation report, the statute provides that the report must include,

without limitation, base salary, bonuses, pension contributions, retirement increases, health insurance costs, life insurance costs, paid sick and vacation leave payouts, annuities, and any other form of compensation or income paid on behalf of the administrator.

Additionally, the report must be presented at a regular school board meeting and submitted to the regional superintendent of schools who shall make copies available to anyone upon request. Presentation of the report at the board meeting is subject to “applicable notice requirements. The law does not, however, require that the board formally approve the report.

HLERK clients have already received a “FAQ” email regarding issues created by the new legislation. Please contact Heather Brickman or Jeff Goelitz with questions regarding your reporting obligations under the new law.

School Districts Required to Allow Visitations by Parents of Special Education Students and Outside Evaluators--In a major change to existing law, P.A. 96-0657, effective August 25, 2009, amends 105 ILCS 5/14-8.02 and 14-8.02 (a) of the Illinois *School Code* to grant special school visitation and evaluation rights to parents and their retained experts.

The statute provides that a parent, independent educational evaluator or qualified professional retained by or on behalf of the parent or child must be given “reasonable access of sufficient duration and scope” to educational facilities, personnel, classrooms and buildings. Access must be provided to any public school facility, building or program and to any facility, building or program supported by public funds.

Prior to the visit, the school district may require the parent, independent educational evaluator or qualified individual to inform the building principal or supervisor in writing about the date and approximate duration of the visit.

The statute provides that the visit should take place at a time that is mutually agreeable to both the district and parent. A school district’s visitation policy cannot conflict with these new visitation requirements. Additionally, the visitor cannot disrupt the educational proc-

ess. The parents must be afforded reasonable access to observe their child in the child’s educational placement.

The evaluator or qualified professional must be afforded reasonable access to allow them to conduct an evaluation of the child, the child’s performance, educational program, placement, services, or environment proposed for the child.

This access includes interviews with personnel, child observations, assessments and tests of the child, or assessments of the child’s educational program, services or placement. Any interviews cannot interfere with the employee’s duties and the school district can limit the personnel interviewed to personnel having information relevant to the child’s educational program.

Interviews must be scheduled for a time, date and place mutually agreeable to both the district and independent educational evaluator.

This statute will substantially impact your school district’s special and regular education programs. Jay Kraning will be discussing its impact at the upcoming IAASE Fall Conference on September 24th. For more information about the statute or its impact on your school, please contact Jay Kraning or Michelle

OMA Cont.

binding opinions in the case of disputes.

2. The Act empowers the Public Access Counselor of the Attorney General's office to process these requests for review.

3. The Act imposes a training requirement on designated employees, officers, or members of public bodies.

4. The Act clarifies that records in the possession of a State's Attorney or the Public Access Counselor for the purpose of determining compliance with the Act are exempt under the *Freedom of Information Act*.

With respect to the training requirement, public bodies must designate individuals to complete an OMA electronic training curriculum by July 1, 2010. After the initial training, the curriculum must be completed on an annual basis.

Freedom of Information Act

As for the amended FOIA, the changes are far reaching and extensive. Like the OMA, the FOIA grants individuals the right to request the Attorney General to review and issue opinions regarding alleged violations.

Again, the Public Access Counselor of the Attorney General's office will be responsible for processing these requests. The Public Access Counselor will also be involved in reviewing a public body's decision to deny a FOIA request when such denial is based on a few specific reasons which are defined in the Act.

Additionally, public bodies are required to designate at least one FOIA Officer who must complete a FOIA electronic training curriculum by July 1, 2010, and annually thereafter. FOIA Officers will be responsible for processing all FOIA requests, and their contact information must be prominently displayed at each administrative or regional office and on the public body's website.

Another major change to FOIA involves revised

definitions and express statements that have greatly expanded the type of information that will be subject to disclosure upon request. For example, the Act expressly states that all records in the possession of a public body are presumed to be subject to disclosure.

In some instances, the Act identifies certain types of documents that are *per se* subject to disclosure, such as settlement agreements. Moreover, the exemptions that allow a public body to deny certain FOIA requests have been substantially revised to limit their applicability.

Other changes include shortened time lines for responding to FOIA requests (from seven to five working days), new copy fee amounts, new electronic information requirements, and increased fines for willful violations.

HLERK will discuss these changes at the upcoming **Illinois Association of School Administrator ("IASA")** sponsored conferences reviewing the legal developments of the year, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2009*. Visit www.iasaedu.org for information and on-line registration.

In addition, we are pleased to announce that HLERK will conduct a series of programs in conjunction with your professional organization, IASA, to review the changes to both Acts. These conferences will consider the implications of the changes to both FOIA and OMA for school districts in greater detail than is possible at our annual IASA sponsored legal conferences. Dates and locations will soon be available. IASA is pursuing administrator academy credit for these upcoming programs. Information will be posted at www.iasaedu.org as soon as it becomes available.

Please contact Rob Swain or Tony Loizzi with questions regarding how these major changes will impact your school district.

Service Dog Cont. benefit of a student with a disability *shall be* permitted to accompany that student at all school functions, whether in or outside the classroom." (emphasis added).

The school district disagreed, arguing that the service dog served no educational purpose, that it would cause a disruption in school, and that it could cause harm to students with severe allergies to animals.

After a hearing, Monroe County Circuit Court Judge Dennis Doyle issued a "preliminary injunction" forcing the school district to allow the child to be accompanied by the service dog.

Pursuant to the terms of the injunction, the dog cannot attend school with the child until September 14, 2009, giving the parents and the school district time to work out the logistics of the dog's presence. According to media reports, the school district intends to appeal the ruling and is seeking a stay of the preliminary injunction pending the appeal.

We will keep you apprised of the progress of this important litigation in The Extra Mile. Contact Stephanie Jones or Bennett Rodick with questions about the impact of this decision on your school district.

List of Prohibited Offenses for School Employment and List of Prohibited Offenses for ISBE Certification Aligned and Expanded--On August 13, 2009, Public Act 96-0431 became effective, significantly modifying school district hiring and termination practices.

The *School Code* has long provided that if an individual is convicted of certain specified offense(s), a school district may not employ that individual. The *School Code* historically set forth a separate list of criminal offenses of which a conviction would result in revocation of a teaching certificate. The Act, among other things, aligns these two lists as well as modifies and, in some cases, expands the lists to include additional offenses.

One area of expansion includes the addition of the criminal act of distributing to or encouraging a child athlete to ingest a drug for the purpose of quick weight gain or loss in connection with participation in athletics. Additional criminal acts placed on the lists include possession or Internet posting of certain obscene or

pornographic material.

The Act also adds a requirement that, if a district superintendent has "reasonable cause to believe that an employee has committed an intentional act of abuse or neglect" with the result of making a child an abused or neglected child as defined in Section 3 of the *Abused and Neglected Child Reporting Act*, and that act resulted in the certificate holder's dismissal or resignation from the school district; then the district superintendent must report the employee to the state superintendent. The state superintendent, then may initiate proceedings to revoke the employee's certificate.

In addition, the Act also adds the requirement that, at least once every two years, school boards conduct in-service training on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel.

Please contact Heather Brickman or Barb Erickson with questions concerning application of these new requirements to your district.

NSBA Publishes Guidance on Legal Issues Regarding Undocumented Students and Public Schools--The National School Boards Association, for only the second time in its long history, is sending a guidance to all member school districts in the United States. The new publication is entitled: *Legal Issues for School Districts Related to the Education of Undocumented*

Children. As Illinois school districts face often complex issues regarding undocumented students, the NSBA document, written in question and answer format, serves as an important starting point. ***Contact Nancy Krent or Jay Kraning with questions regarding this issue or to request a complimentary copy of the NSBA publication.***